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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,704	07/25/2001	Stig Jansson	CU-2513 RJS	2557

7590

01/05/2004

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EXAMINER

WINSTON, RANDALL O

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,704

Applicant(s)

JANSSON ET AL.

Examiner

RANDALL WINSTON

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on the amended claims filed on 7/25/2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 0501 . 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-12 are rendered exceedingly vague and indefinite for reasons too numerous to individually mention. (e.g, it is unclear in claim 1 when the frozen step, thawing step, separation step and isolation step are performed. Applicant may overcome this rejection by separating and clearly defining each step.) Below are other examples of vague and indefinite terms and phrases.

Claims 1-12 are rendered vague and indefinite by the term "process." Applicant may overcome this rejection by replacing the term "process" with "a process."

Claim 1 is rendered vague and indefinite because applicant has not placed in claim 1 either "comprising" or "consisting" language. Applicant may overcome this rejection by placing the above language within claim 1.

Claim 1 is rendered vague and indefinite by the phrase "and being of a biological origin." It is unclear of what is of a biological origin. (Is it the material being of a biological origin?) It is suggested to applicant to overcome this rejection to replace the above term with "and said material being of a biological origin" or rewrite the above

phrase to make clearer. Claim 1 is rendered vague and indefinite by the phrase "in which process." Applicant may overcome this rejection by rewriting the above phrase.

Claim 1 recites the limitation "the biological material." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps)

Claim 1 is rendered vague and indefinite by the phrase "is either frozen and cut." It is unclear whether the biological material is frozen and cut or whether the biological material is frozen or cut. Applicant may overcome this rejection by clarifying the above term.

Claim 1 is rendered vague and indefinite by the phrase "wherein the biological material subsequently is thawed to a temperature within the interval 0c to 60c." It is unclear whether the process (i.e. meaning the thawing step) is performed after the frozen step. Applicant may overcome this rejection by clearly separating these steps.

Claim 1 recites the limitation "the interval 0c to 60c." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps.)

Claim 1 is rendered vague and indefinite by the phrase "although below the denaturing temperature for the proteins." It is unclear to when is this step performed. (Is the above phrase performed within the thawing step?). Applicant may overcome this rejection by clearly separating these steps.

Claim 1 recites the term "said." Applicant may overcome this rejection by replacing "sad" with "said."

Claim 1 recites the term "fat/lipid." Applicant may overcome this rejection by replacing "fat/lipids" with "fat or lipids."

Claim 1 recites the limitation "the resulting composition." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps.)

Claim recites the limitation "the found denaturing temperature." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps.)

Claim 1 is rendered vague and indefinite by the phrase "per se known manner." The above phrase is unclear. Applicant is suggested to clarify the above phrase.

Claim 1 is rendered vague and indefinite by the phrase "material is being process." It is unclear to when this step is performed. (Is this step performed within the separation step or isolation step?)

Claims 2 and 3 are rendered vague and indefinite by the term "freezing/thawing." Applicant may overcome this rejection by replacing "freezing/thawing" with "freezing or thawing."

Claims 2 and 3 are rendered vague and indefinite by the terms "continuously" or "semi-continuously." It is unclear to how these terms differ from one another. Applicant may overcome this rejection by clarifying the above terms.

Claim 6 is rendered vague and indefinite by the phrase "wherein a non-denatured oil including etc." It is unclear to when this step is performed in claim 1. (Is this step performed within the frozen step, thawing step, separation step or isolation step?)

Claim 7 recites the limitation "the grax." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps.) (Is this step performed within the frozen step, thawing step, separation step or isolation step in claim 1?)

Claim 9 is rendered vague and indefinite by the phrase "wherein the process is performed under a vacuum or under an inert atmosphere" It is unclear to when this step is performed in claim 1. (Is this step performed within the frozen step, thawing step, separation step or isolation step?)

Claim 10 recites the limitation "the raw material." There is insufficient antecedent basis for this limitation in the claim. (i.e. most of applicant steps therein do not further define the previous step and/or previous steps.) (Is this step performed within the frozen step, thawing step, separation step or isolation step in claim 1?)

Claim 11 is rendered vague and indefinite by the phrase "wherein the cell disrupting compound(s) is/are enzyme(s) etc." It is unclear to when this step is performed in claim 1. (Is this step performed within the frozen step, thawing step, separation step or isolation step?)

Claim 12 is rendered vague and indefinite by the phrase "wherein the one or more anti-oxidant(s) is/are added during the process" It is unclear to when this step is performed in claim 1. (Is this step performed within the frozen step, thawing step, separation step or isolation step?)

All other claims depend directly or indirectly from the rejected claims are, therefore, also rejected under 35 U.S.C. 112, second paragraph, for the reasons set forth above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Jansson et al. (No. patent application number 1993 3009).

Although very unclear as drafted, applicant claims a process for separating and isolating from a biological origin material (i.e. fish) fats or lipids and non-denatured proteins and non-denatured oils comprising (?) the steps of freezing and cutting (i.e. by grinding) the biological material at a particular temperature, subsequently thawing (i.e. heating) the biological material at a particular temperature as not to denature the protein contained within the biological material, then separating and isolating the lipids, fats and non-denatured protein and non-denatured oils from the biological material.

Jansson et al. anticipates the claimed invention because Jansson et al. teach a process of separating and isolating from a biological origin material (i.e. fish or marine material) high yields of non-denatured oils, fats or lipids that would also inherently produce non-denatured protein from biological material when such steps are performed as the steps of comprising of freezing and cutting (i.e. by grinding) the biological material

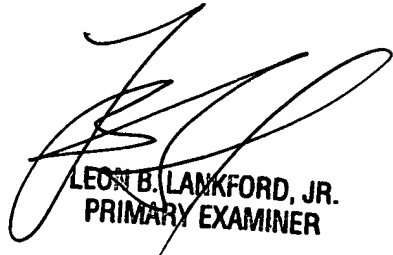
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at the same temperature interval (i.e., freezing at -6 degree Celsius), subsequently thawing (i.e. heating) the biological material at the same temperature interval (i.e. thawing at 6 degree Celsius) as not to denature the protein contained within the biological material (please note on page 9 of Jansson et al 's specification, it states that the heating (i.e. thawing step) should be done at low temperature not to denature the protein), then separating and isolating high yields of lipids, fats or non-denatured oil that would also inherently produce non-denatured protein from the biological material when the above steps are performed. Therefore, the reference is deemed to anticipate the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RANDALL WINSTON whose telephone number is 703-305-0404. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone number for the organization where this application or proceeding is assigned is 703-746-3110.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



LEON B. LANKFORD, JR.
PRIMARY EXAMINER